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Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

701 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004

One Financial Center  
Boston, Massachusetts 02111  
Telephone: 617/542-6000  
Fax: 617/542-2241

Telephone: 202/434-7300  
Fax: 202/434-7400  
Telex: 753689

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

Direct Dial Number  
202/434-7305

Howard J. Symons

February 1, 1995

Mr. William F. Caton  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

Re: Joint Petition for Rulemaking to Establish Rules for  
Subscriber Access to Cable Home Wiring for the Delivery  
of Competing and Complementary Video Services (RM-8380);  
Ex Parte Filing

Dear Mr. Caton:

Cablevision Systems Corporation ("Cablevision") hereby submits these comments regarding a potential proposal that would mandate transfer of a cable operator's multiple dwelling unit (MDU) internal distribution plant to competitors. Proposals under consideration include the expansion of the demarcation point between cable plant and subscriber premises,<sup>1/</sup> as well as sharing and transfer of hallway wiring and other internal distribution plant in MDUs.

The practical effect of any of these proposals is to require a mandatory transfer of cable operator assets -- distribution wire and feeder plant -- at artificially low prices to competitors that are unwilling to invest in their own distribution facilities. Such a proposal is (1) rife with potential technical, safety and maintenance problems, (2) unnecessary, (3) inequitable, (4) beyond the Commission's statutory authority, and (5) directly contrary to the goal of promoting two-wire, broadband telecommunications

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<sup>1/</sup> The Commission's current rules mark the demarcation point between subscriber premises and cable plant "at (or about) twelve inches outside of where the cable wire enters the subscriber's premises." In multiple dwelling units (MDUs), the demarcation point is "at (or about) twelve inches outside of where the cable wire enters the subscriber's dwelling unit." 47 C.F.R. § 76.5(mm).

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competition for both business users and residential subscribers, including tenants.

The ultimate effect of this proposal will be to deny subscribers -- particularly those who reside in MDUs -- a competitive choice of providers of video programming and other telecommunications services. Some landlords may be less interested in ensuring that their tenants have a choice of competing providers, and more intent on entering into an exclusive arrangements with an overbuilder seeking to avoid incurring the costs of entering into the video programming distribution business. Even in localities where landlords are precluded from entering into exclusive arrangements on a building-wide basis with one provider, the effect of the proposals under discussion will still be to deny individual subscribers the benefits of two-wire competition.

**The Proposal Disproportionately Harms Operators With Advanced Networks Serving A Large MDU Subscriber Base**

By requiring operators to relinquish control of the distribution infrastructure that they have installed and maintained in MDUs, the proposal would have a particular adverse effect on systems providing service to such buildings. For example, in New York City, over 70% of Cablevision's potential subscriber base reside in MDUs. In Yonkers, MDU customers represent 47% of Cablevision's actual subscriber base. While in Boston, the portion of Cablevision subscribers residing in MDUs is 70%. Thus, the proposal would significantly affect a substantial portion of Cablevision's subscriber base.

By mandating competitors' access to its MDU internal distribution plant, the proposal also would jeopardize the integrity and reliability of the advanced networks being developed by Cablevision. For example, Cablevision's New York system is state-of-the-art and offers subscribers a variety of two-way services and capabilities, such as impulse technology which permits subscribers to obtain pay-per-view movies and events without using the telephone. The system's two-way capabilities also greatly enhance the quality of service delivered to subscribers, and significantly accelerates the company's ability to locate and limit any outages or problems that do arise. Status monitoring and performance data are continually transmitted back to the headend over the system's return signal paths. Likewise, in Yonkers, Cablevision is using its newly-constructed Optimum system to provide advanced, interactive services such as interfaces with

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America On-Line and the Internet, and the company intends to use that network to offer other services such as telephony and electronic messaging.

Cablevision's ability to ensure reliable delivery of these advanced services and capabilities in New York, Yonkers, and other areas is significantly endangered by proposals that provide its competitors with access to its network infrastructure.

### **Technical and Safety Issues**

The proposal raises a host of safety, maintenance, and aesthetic issues for operators serving MDUs. A substantial portion of the MDUs served by Cablevision in New York City, Long Island, and Boston utilize hallway wire molding for distribution of signals within the building to individual subscriber units. Shielded cable wires are run along MDU hallway ceilings, then hidden from view by molding that is applied atop the shielded cable. Cablevision estimates the cost of installing hallway wire molding distribution systems to be roughly \$150 for each individual unit within an MDU.

Requiring Cablevision to provide competitors with access to its hallway wire molding systems will create considerable confusion regarding responsibility for maintenance and repair. Additional service and aesthetic maintenance requirements will surely be generated by the proposal due to the increased frequency with which hallway wire mold covers will be removed, replaced, or tampered with.<sup>2/</sup> Because of the uncertainty and potential conflict regarding responsibility for any maintenance and service, the proposal would force Cablevision to bear the risk of breaches of fire, health and safety codes -- as well as additional maintenance and repair costs -- caused by its competitors inadequate workmanship, use of substandard or nonspecification cable, improper shielding or installation practices, or interference with plant

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<sup>2/</sup> This is a significant issue, since the use of hallway wire molding systems in part reflects a response to aesthetic concerns on the part of MDU owners and residents. See, e.g., N.Y. Exec. Law § 828 (and regulation promulgated thereto).

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that was installed by Cablevision in accordance with applicable codes.<sup>3/</sup>

Service interruptions, CLI leakage, and unwanted signal ingress due to actions by competing maintenance personnel are likely to occur in some instances.<sup>4/</sup> The risk of unwanted signal ingress is particularly significant for Cablevision, due to the two-way capabilities of its New York system. Any interference with return signals going into the headend from subscriber premises and points within the system will undermine the system's monitoring capabilities, and the delivery of interactive and two-way services such as pay-per-view video, data base access, telephony, and other electronic information services.

#### **The Proposal Is Inequitable**

The proposal under discussion is patently unfair to cable operators that have borne the costs of installing and maintaining the distribution infrastructure within MDUs. They should not be required to relinquish control of an asset that they have invested in and subsidize the costs of entry into their business by

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<sup>3/</sup> For example, in one MDU, Liberty Cable has placed its cables in hallway molding installed and maintained by Cablevision. Liberty cut holes in the existing hallway molding in order to run its cable to subscribers, which could require Cablevision to spend up to \$2000 in repair costs. Moreover, Cablevision routinely attaches its hallway wires and molding with lead nail-its and metal ties, in order to ensure that in the event of fire -- and melting of the molding -- the cables do not fall and block residents trying to escape the building. The cables installed by Liberty within Cablevision's molding are not attached, aggravating safety and fire risks.

<sup>4/</sup> For example, in the MDU where it utilizes Cablevision's hallway molding, Liberty disconnected Cablevision's wires at the hallway barrel and plugged its wires in before Cablevision had terminated the signal at the tap. Such action heightens the risk of CLI leakage and unwanted signal ingress.

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competitors.<sup>5/</sup> Under the proposal, however, an operator would surrender control of portions of this internal distribution infrastructure whenever a subscriber terminates service.<sup>6/</sup> Thus, Cablevision would be forced to prematurely abandon its \$150/unit investment in a subscriber's hallway wiring. Moreover, forcing the transfer of the wire at the replacement cost of the wire itself (as is provided in the current home wiring rules)<sup>7/</sup> undercompensates the operator. It does not enable the operator to fully recoup labor and service costs associated with installing and maintaining both the wire and the hallway distribution system, and it fails to account for the expected return on the capital invested over the life of the asset.<sup>8/</sup> Moreover, the proposal effectively permits competitors to seize portions of Cablevision's property and expand

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<sup>5/</sup> If anything, the Commission should be considering action to deter overbuilders from seizing control of the incumbent cable operator's wires without permission or authorization. See "The Overbuilder's Checklist," Private Cable Wireless Cable, December, 1994 at 29-31 (see attached enclosure). Included in "The Overbuilders Checklist" developed for wireless and private cable overbuilders are such suggestions as "the stealth switch (take the wire)," "the announced switch (lawyer for hire)," and "disconnection of existing service." Id. at 31.

<sup>6/</sup> Some parties have suggested that a cable operator should be forced to provide overbuilders with access to its MDU junction boxes and riser cables. Not only would this approach aggravate the technical and safety risks described earlier, the expansion of access to Cablevision's MDU junction boxes would aggravate the risk of signal theft.

<sup>7/</sup> In the Matter of Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Cable Home Wiring, 8 FCC Rcd 1435 (1993) ("Home Wiring Order"), at ¶¶ 18-19.

<sup>8/</sup> When the operator is forced to prematurely relinquish control over the wire before it has been fully depreciated, regulated installation rates will not enable the operator to recoup the costs associated with installing and servicing the wire. Thus, transferring the wire at replacement cost -- which the Commission estimates to be six cents per foot for coaxial cable, see Home Wiring Order at n.39 -- will not even permit the operator to fully recover its incremental expenses, let alone the lost opportunity costs associated with the infrastructure investment it is being forced to surrender.

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their presence in the telecommunications services business without investing fully in network infrastructure.

In order to continue competing for distribution of video programming and other telecommunications services to a unit terminating service, the operator would have to spend additional capital to install inside wiring a second time to replace the cable turned over to its competitor. The proposal would disproportionately harm operators serving MDUs with leasehold tenants, where the occupants of subscriber units can be expected to change a number of times during the useful life of the hallway wiring system. Thus, even if the occupant of a particular unit is taking service from another provider, the hallway wire dedicated to that unit is still useful to the cable operator who may one day regain the opportunity to serve that subscriber, serve that unit when its occupancy changes, or provide non-video services such as telephony, data, and other information services.<sup>2/</sup>

**Both Transferring Control and Sharing of the Inside Wire Are Infeasible**

Under the proposal being discussed, it is unclear whether overbuilders would be subject to the same obligation to transfer control over inside wiring facilities whenever one of their subscribers terminates service. Thus, there is no guarantee that a cable operator would be able to regain control of its wire should a particular subscriber become dissatisfied with the competing provider.

Even if overbuilders were formally subject to a transfer requirement, it is simply not feasible for management or ownership of inside wiring to switch back and forth between competing video programming and telecommunications services providers. Two different providers may have entirely different expectations regarding such matters as signal quality, shielding, and maintenance standards. For example, because of the two-way capabilities and services provided by Cablevision's New York system, it is critical for the company to detect and prevent any

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<sup>2/</sup> Because of New York State's Access to Premises to Law, 28 N.Y. Exec Law § 828, cable operators have the right to compete to serve any individual subscriber unit within an MDU. The effect of the Commission proposal would be to undermine the type of two-wire competition being promoted through such a law.

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wire maintenance problems that might cause unwanted signal ingress back to the head-end. On the other hand, a competing provider uninterested in offering two-way services that obtains control over a unit's hallway wiring for some period of time might care little about such issues. Thus, even if Cablevision regained the opportunity to provide service to that unit, it likely would have to reinstall another wire in order to ensure that the subscriber has access to the full complement of services offered by the company.

Nor is it at all feasible for two competing providers to share simultaneously the hallway wire dedicated to a particular subscriber's premises. The technical problems described above that are associated with sharing hallway wire molding systems -- signal quality degradation, CLI leakage, unwanted signal ingress -- will be aggravated significantly when two providers share the same wire. Indeed, such technical problems are inherent in any wire-sharing proposal, since such arrangements burden the wire with an increased number of splitters and filters in order to ensure separation between the signals provided by the competing providers. Moreover, the risk of service interruptions and increased maintenance and repair costs caused by the actions of competing service personnel, also rises substantially when two providers are working on the same wire.

#### **The Proposal Is Unnecessary**

Apart from its inequity and inherent technical problems, the proposal being discussed is completely unnecessary. In any MDU that contains a pre-existing wire molding distribution system constructed by a competing provider, Cablevision routinely installs a second distribution system, in order to protect the operational integrity of each provider's internal distribution infrastructure. There is simply no valid reason why competing providers such as Liberty Cable cannot do the same thing.

#### **Two-Wire Competition Will Be Thwarted**

The proposal being discussed also will undermine completely the Commission's goal of promoting two-wire competition. Many operators -- including Cablevision -- are offering additional non-video services to subscribers, such as access to electronic data bases and telephony. In New York City, Cablevision's hallway wires in MDUs carry 750 MHz of capacity, which represents 200 MHz of

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additional capacity beyond that needed to distribute its video programming services, and thus permits the company to provide additional services to subscribers. Thus, even if a subscriber decided to terminate cable service, the inside wire could still be used by Cablevision to deliver other telecommunications services to subscribers, such as telephony, access to electronic data bases, home banking and other information services.

Under the proposal being discussed, however, the forced relinquishment of the internal wire would prevent Cablevision from using it to offer these additional advanced services. The proposal would foreclose significant new business opportunities for Cablevision, and thwart the delivery of advanced services to subscribers. In addition, there is no guarantee that the overbuilder seizing the wire would have the capability or the desire to offer these services. Even if the overbuilder did wish to provide such services, the effect of the proposal is to deny consumers the opportunity to choose among competing providers of advanced services. In short, the proposal will diminish, rather than enhance, consumer choice.

By allowing competing providers to seize control of the incumbent cable operators distribution infrastructure within MDUs, the proposal will discourage telcos and other competitors from constructing their own end-to-end broadband networks. Indeed, the proposal is almost sure to encourage predatory behavior by cream-skimmers. An alternative provider could simply wait for cable operator to spend the money constructing a sophisticated end-to-end distribution network, offer comparable video service at temporarily discounted rates, and then seize control of the operator's internal distribution system on a subsidized basis that prevents the operator from receiving a return on its investment or offering subscribers head-to-head competition.

Faced with such risks, operators with a significant portion of their subscriber base in MDUs simply will not invest in network upgrades in the face of a government policy that makes it highly likely that a competitor -- rather than the investing operator -- will recover the return on the investment in infrastructure. Thus, the proposal eventually will discourage both operators and competitors from making infrastructure investments.



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**There Is No Statutory Basis For The Proposal**

Finally, the Commission clearly lacks the statutory authority to mandate transfer of any home wiring beyond the immediate vicinity of a subscriber's premises. The Commission is only authorized to prescribe rules regarding post-termination of service disposition of "any cable installed by the cable operator *within the premises of*" subscribers.<sup>10/</sup> Congress specifically decided to limit the Commission's power to order transfers of home wiring only to cable installed within the premises of subscribers. Thus, notwithstanding its general Title I authority under the Communications Act, any effort by the Commission to expand its current inside wiring rules to require transfers of cable located beyond subscriber premises is prohibited.<sup>11/</sup> Likewise, the statutory language clearly precludes the Commission from mandating wiring transfers prior to termination of service.

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<sup>10/</sup> Cable Television Consumer Protection and Competition Act of 1992, P.L. No. 102-305, Section 16(d), 106 Stat. 1460 (1992), 47 U.S.C. § 544(i) (emphasis added).

<sup>11/</sup> See, e.g., Morales v. Trans World Airlines, Inc., 112 S.Ct. 2031, 2037 (1992) (commonplace of statutory construction that the specific governs the general); Gozlon-Peretz v. U.S., 111 S.Ct. 840, 848 (1991) (specific provision controls over one of more general application); Mail Order Ass'n of America v. U.S. Postal Service, 986 F.2d 509, 515 (D.C. Cir. 1993) (noting obligation to prefer the more specific statute over a conflicting general one).

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For the reasons described above, Cablevision urges the Commission staff to refrain from imposing any new rules regarding inside wiring.

Sincerely,

A handwritten signature in dark ink, appearing to read "Howard J. Symons", followed by a small handwritten mark that looks like "CSH".

Howard J. Symons  
Christopher J. Harvie  
Attorneys for  
Cablevision Systems Corporation

Enclosures

cc: Mr. Greg Vogt  
Ms. Lisa Smith  
Ms. Maureen O'Connell  
Ms. Jill Lockett  
Ms. Mary McManus  
Ms. Merrill Spiegel

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# The Overbuilder's Checklist

By Staff Writer

Attendees at the "Overbuild Workshop" went through the Overbuilder's Checklist — a list of items a wireless or private cable operator should consider when overbuilding an incumbent cable operator. Workshop leader W. James MacNaughton, an attorney, drew on his experience in representing Liberty Cable Co., which has been successfully overbuilding Time Warner in New York City.

MacNaughton brought attendees into the discussion by assigning individuals various roles and asking them questions. Attendees were told "there are no right or wrong answers. If you don't know the answer, make it up. Your common sense and imagination will usually give you the best answer."

Attendees learned there are significant opportunities and pitfalls in overbuilding. The opportunity, MacNaughton said, is vast. But the overbuilder has to navigate through a labyrinth of legal complexities to avoid

lawsuits for tortious interference with contract, unfair competition and "trespass to chattels" (taking some-



W. James MacNaughton

one else's property).

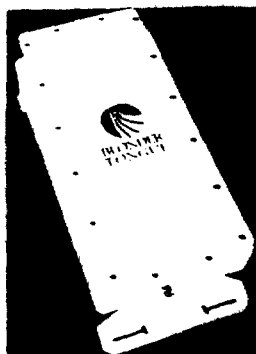
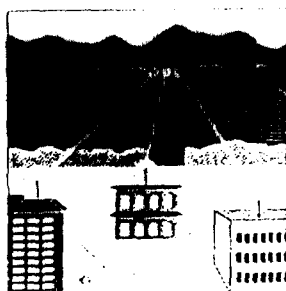
The workshop discussed the federal cable home wiring rules which, if fully implemented, would allow most overbuilding without the risk of being sued for trespass to chattels. Attendees were strongly encouraged to weigh in at the Federal Communications Commission on the pending reconsideration of the



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federal cable home wiring rules.

There was also an extensive discussion on the "nuts and bolts" of disconnecting an incumbent's subscriber, connecting a new subscriber and returning converter boxes.

The attendees learned the federal cable/telco legislation will probably have provisions for equal access by all telecommunications companies to multifamily properties. There was a discussion on the wisdom of relying on exclusive agreements as a long-term strategy.

## The Overbuilder's Checklist

Below is a list of items a wireless or private cable operator should consider when overbuilding an incumbent cable operator.

1. Will the opportunity justify the time and expense?
2. What is the agreement between the owner and existing cable company?
  - Written agreements (exclusive, recorded, assignments and notice)
  - Oral agreements and course of conduct
  - Access laws
  - Can the owner eject the existing cable company?
  - Will the owner eject the existing cable company?
  - Should the owner eject the existing cable company?
3. How much equipment already in place, if any, will the overbuilder use?
  - Inside wire
  - Feeder wire
  - Splitters/taps
  - Conduits
  - Junction boxes
  - Gen boxes
  - Amplifiers
4. Who owns and controls that equipment?
  - Cable home wiring
  - Law of fixtures
  - Conduits
5. What will the relationship be between the overbuilder and the owner?
  - Bulk
  - Exclusive or non-exclusive
  - Indemnities—control and payment of litigation

## 6. How will the switch-over occur?

- The stealth switch (take the wire)
- The announced switch (lawyer for hire)
- Converter collection and return
- Disconnection of existing service
- Post-disconnection billing

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